IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.18047 of 2007
CHANDRAMA SAH, SON OF RAM LAGAN SAH, RESIDENT OF VILLAGE-LAUWA KALA, P.S. BANIAPUR,DISTRICT-SARAN.
……..PETITIONER.

Versus

1. **THE STATE OF BIHAR.**
2. **BHAGARTHI DEVI, WIFE OF LAL BABU SAH, RESIDENT OF VILLAGE-LAUWA KALA, P.S. BANIAPUR, DISTRICT-SARAN.**
……OPPOSITE PARTIES.

For the Petitioner : M/s. N.K. Agarwal, Senior Advocate, Krishna Kant Singh and Anil Kumar Sinha, Advocates.
For the State : Mr. Suraj Bans Rai, A.P.P.

O R D E R

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This is an application for quashing of the order dated 22.2.2007 passed by the learned Presiding Judge, Fast Track Court No.V, Saran at Chapra, in Sessions Trial No.512 of 2006, arising out of Baniapur P.S. Case No.143 of 2001, whereby he has refused to discharge the petitioner of the offences under Sections 120-B, 324, 302, 201, 406, 420 I.P.C. by rejecting his petition in that regard.

It appears that one Bhagrathi Devi, impleaded herein as O.P. No.2, filed a petition of complaint inter alia alleging that Saral Sah and Sunil Sah, accused nos.4 and 5 respectively, told her son, Manoj Sah, that his uncle Bharat Sah, accused no.1 and the petitioner herein, had sent him to them on an understanding that he would accompany them to Kolkata where he would drive his uncle's truck which would fetch him Rs.100000/- whereafter, with his uncle standing as a

guarantor , he could purchase a truck of his own. Enticed by the allurement, Manoj accompanied accused nos.4 and 5 to Kolkata on 17.2.1997 and started driving Bharat Sah's truck. It is further alleged that the petitioner herein induced Manoj to deposit his salary with him on the pretext that when his deposit would become Rs.100000/- he would stand guarantor for him to buy a truck for himself and accordingly Manoj deposited in all a sum of Rs.1,44,000/- with the petitioner. It is also alleged that accused no.1 in order to misappropriate the said amount conspired with the other accused and poisoned Manoj to death and also cremated his dead body surreptitiously without informing the parents. It is said that when the complainant went to Kolkata and confronted the accused persons of not having informed her of the death of her son and cremating him without holding a post mortem their answer was dissatisfactory which bordered on delay being caused and the petitioner assured to hand over Manoj's deposited money to her. She claims to have handed over a detailed report to the Baniapur P.S. on 29.12.2000 and also informed the police, but that notwithstanding, no case for murder was registered.

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The said complaint was forwarded to the concerned police station under Section 156(3) Cr.P.C. on the basis whereof Baniapur P.S. Case No.143 of 2001 came to be registered. It appears that the police after due investigation submitted a final form showing the case to be false. However, the learned Chief Judicial Magistrate, Saran at Chapra, differing with the police report took cognizance, as stated

above, and issued process against the petitioner.

It has been submitted by the learned counsel for the petitioner that although there was no material available in the case diary yet the learned Magistrate took cognizance in a mechanical way by referring to the protest petition as also coming to the conclusion that there was sufficient material available in the case diary. It was sought to be contended that there was no evidence in the case diary to substantiate the allegation of the deceased Manoj Sah, depositing money with the petitioner herein or of the petitioner having demanded any money from the deceased or of there being any differences between the deceased and the petitioner.

The learned counsel sought to point out that the Investigating Officer in course of investigation had gone to West Bengal where witnesses had deposed that Manoj had fallen ill and he was treated at the Government Hospital at Kalyani, District-Nadia where he died on 21.8.2000. The certificate of death issued by the Hospital disclosed the reason of death as cardio respiratory failure. The Kalyani Municipality also issued a certificate of death of Manoj which corroborates the records of the Hospital and the staff of the Hospital on being interrogated by the police gave out that he had died of illness. The details of the statement of witnesses recorded under Section 161 Cr.P.C. which were favourable to the prosecution were also brought to my notice as was paragraph-60.

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The factum of death of Manoj Sah is neither in dispute nor in controversy. Admittedly, the petitioner has submitted the two death

certificates, one granted by J.N.M. Hospital , Kalyani, Nadia and the other by Kalyani Municipality showing the date of death as 21.8.2004 and death had been caused by cardio respiratory failure.

The death of the boy is an admitted fact and it can only be ascertained during the trial whether the death of deceased Manoj Sah was caused due to illness or cardio respiratory failure or by administration of poison.

In the facts and the circumstances, discussed above, I find no reason to interfere with the impugned order and dismiss the application.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 19th of December, 2008.
Pradeep Srivastava/A.F.R.

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